

Book Review: Robin West and Cynthia Grant Bowman (eds), *Research Handbook on Feminist Jurisprudence* (Edward Elgar, 2019)

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Feminist jurisprudence is unfortunately not an extensively studied subject in law courses in the United Kingdom. Most researchers with extensive careers would struggle with clearly explaining the key schools of thought, authors or concepts in feminist jurisprudence. Arguably, however, all areas of law would greatly benefit from a feminist investigation. This is true for areas, which expressly deal with women issues, but equally important in areas of law, which are written as “gender-neutral.” To dispel some of the mystery around feminist jurisprudence,¹ Edward Elgar has published a much-needed collection of expert views on feminist jurisprudence. Although most contributions offer the United States’ perspective, this research handbook’s rich spread of twenty-six chapters (including the Introduction), represents a welcome addition to jurisprudential literature.²

At the start *Robin West* introduces this research handbook with a clear and easily accessible overview of feminist legal theory, starting with the two opposite views: liberal legal feminism and radical feminist legal theory.³ The two competing approaches and their theoretical differences eventually opened the space for further development of plurality of theoretical approaches (relational feminism; vulnerability theory; intersectional feminism(s); postmodern, queer; sex-radical and sex-positive feminism; or socialist feminism). It is apparent that feminist legal thought will persist, “as long as [women’s] subordination itself persists as a widespread and diminishing force in women’s and girls’ lives.”⁴ Plurality of feminist theory is explored in contributions on the varieties of feminist legal theory (**Part I**);⁵ the interface between feminist legal theory and criminal law (**Part II**);⁶ or reproductive rights (**Part III**);⁷ the interrelationship among feminist legal theory,

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¹ Robin West and Cynthia Grant Bowman (eds), *Research Handbook on Feminist Jurisprudence* (Edward Elgar, 2019) (West and Grant Bowman). The other research handbook is: Susan Harris Rimmer and Kate Ogg (eds), *Research handbook on Feminist Engagement with International Law* (Edward Elgar Publishing, 2019).

² There have been several contributions on feminist jurisprudence (for example: Hilaire Barnett, *Introduction to Feminist Jurisprudence* (Cavendish Publishing, 1998)); although often textbooks on jurisprudence include only limited chapters on feminist jurisprudence (for example Chapter 15 (out of 18 chapters in total) in MDA Freeman, *Lloyd’s Introduction to Jurisprudence* (8th edn, Sweet & Maxwell, 2008); this continues in a subsequent edition, Chapter 14 (out of 19 chapters in total), with some contributions other chapters on justice and critical race theory in MDA Freeman, *Lloyd’s Introduction to Jurisprudence* (9th edn, Sweet & Maxwell, 2014)). Feminist jurisprudence is included as a singular chapter in a useful, yet broader handbook on feminist theory: Lisa Disch and Mary Hawkesworth (eds), *The Oxford Handbook of Feminist Theory* (Oxford University Press, 2016).

³ Robin West, ‘Introduction to the *Research Handbook on Feminist Jurisprudence*,’ pp 1-22.

⁴ West (n3) 22.

⁵ There are eight contributions in **Part I**: (1) Sylvia A Law, ‘In defense of liberal feminism,’ pp 24-43; (2) Chao-ju Chen, ‘Catharine A. MacKinnon and equality theory,’ pp 44-64; (3) Robin West, ‘Relational feminism and law,’ pp 65-72; (4) Martha Albertson Fineman, ‘The limits of equality: vulnerability and inevitable inequality,’ pp 73-90; (5) Cynthia Grant Bowman, ‘Socialist feminist legal theory: a plea,’ pp 91-111; (6) Dorothy E Roberts, ‘Critical race feminism,’ pp. 112-126; (7) Laura A Rosenbury, ‘Postmodern feminist legal theory,’ pp 127-137; (8) Nan D Hunter, ‘Feminism, sexuality and the law,’ pp 138-164.

⁶ Four contributions in **Part II**: (1) Deborah Tuerkheimer, ‘Sexual agency and the unfinished work of rape law reform,’ pp. 166-183; (2) Nivedita Menon, ‘Sexual violence and the law in India,’ pp 184-212; (3) Victoria Nourse, ‘Violence against women and liberal sexism,’ pp 213-230; (4) Ngaire Naffine, ‘“Some gentle violence”: marital rape immunity as contradiction in criminal law,’ pp 231-247.

⁷ Two contributions in **Part III**: (1) Lisa C Ikemoto, ‘Reproductive rights and justice: a multiple feminist theories account,’ pp 249-263; (2) Noya Rimalt, ‘Against *Roe* exceptionalism: degendering abortion,’ pp 264-282.

sex discrimination and sexual harassment (**Part IV**);⁸ select perspectives on constitutional law (**Part V**);⁹ or private law (**Part VI**);¹⁰ and finally, the views of feminist legal theory on international law (**Part VII**).¹¹

Part I contains a useful introduction to the diversity of feminist theory and is particularly insightful for a novice reader in this area. *Sylvia A. Law* draws on the US context in which she offers a detailed description and defence of liberal feminism, in times when both liberalism and feminism are under constant attacks.¹² *Law* explores in detail examples of backlash against liberal feminism in the US since 2016, including reproductive health care for women; sexual harassment law; and economic inequality of women. *Chao-ju Chen* offers an insight to Catharine A. MacKinnon's "momentous contributions to feminist theory"¹³ with her theory of equality and sexuality as a theory of power in the early 1980s. This overview is particularly helpful to the inexperienced reader of feminist jurisprudence. In her second individual contribution to this research handbook *Robin West* explores relational legal feminism, as a response to the problems or dilemmas with liberal feminism, which is based on formal equality. Continuing on the topic of equality *Martha Albertson Fineman* advocates for an approach based on the vulnerability theory according to which "the state must be responsive to the realities of human vulnerability and its corollary social dependency, as well as to situations reflecting inherent or necessary inequality, when it initially establishes or sets up mechanisms to monitor these relationships and institutions."¹⁴

Next, *Cynthia Grant Bowman*, after many years in the field, returns to socialist feminist theory. *Grant Bowman* finds other feminist theories useful to a degree, but ultimately inadequate in explaining "the deeper structures that are responsible for the persistence of male dominance"¹⁵ and feminist legal theory, which is grounded in theory of socialist feminism can cure this deficiency, with its "insights about the interdependence of capitalism and patriarchy" resultingly offering "a foundation upon which to construct campaigns for lasting change."¹⁶ Turning her attention to another key feminist theory, *Dorothy E. Roberts* explores critical race feminism, its historical developments, state regulation of black women's bodies and the intersection of legal institutions that operate in conjunction to marginalize black women. In response *Roberts* offers two frameworks to "resist women's subordination – reproductive justice and anti-carceral approaches to domestic violence."¹⁷ *Laura A. Rosenbury* gives a brief overview of the history and application of the postmodern feminist legal theory and advocates for an affirmative

⁸ Three contributions in **Part IV**: (1) Kimberly A Yuracko, 'Sexual harassment law: an evolution in theory, scope and impact,' pp 284-302; (2) Orit Kamir, 'A dignitarian feminist jurisprudence with application to rape, sexual harassment and honor codes,' pp 303-320; (3) Katharine K Baker, 'Sex equality, gender injury, Title IX and women's education,' pp 321-341.

⁹ Two contributions in **Part V**: (1) Julie A Nice, 'The gendered jurisprudence of the Fourteenth Amendment,' pp 343-365; (2) Mary Anne Franks, 'Beyond 'Free Speech for the White Man': feminism and the First Amendment,' pp 366-384.

¹⁰ Four contributions in **Part VI**: (1) Martha Chamallas, 'Feminist legal theory and tort law,' pp 386-405; (2) Hila Keren, 'Feminism and contract law,' pp 406-425; (3) Susan Frelich Appleton, 'How feminism remade American family law (and how it did not),' pp 426-445; (4) Julie C Suk, 'Feminism and family leave,' pp 446-466.

¹¹ Two contributions in **Part VII**: (1) Adrien K Wing, 'International law and feminism,' pp 468-484; and (2) Irem Çağlar and Berna Akçali Gür, 'The state's due diligence obligation,' pp 485-502.

¹² *Law* (n5) 30.

¹³ *Chen* (n5) 44.

¹⁴ *Albertson Fineman* (n5) 73.

¹⁵ *Grant Bowman* (n5) 91.

¹⁶ *Grant Bowman* (n5) 91.

¹⁷ *Roberts* (n5) 114.

conception of this theory, arguing against a reductionist view of it, in that it has “much more to offer than mere critiques of other theories.”¹⁸ In the concluding chapter in **Part I**, *Nan D. Hunter* “offers a guide to the sexuality debates within feminism, specifically as they affected and were affected by the law.”¹⁹

Part II focuses on the application of feminist legal theory in criminal law. To start, *Deborah Tuerkheimer* discusses the developments in rape law, which is a story of progress, even if incomplete.²⁰ Based on historical exploration and feminist theory, *Tuerkheimer* argues that modern rape law should be based on the promotion of female sexual agency (contrary to the majority autonomy justification).²¹ Turning to the evidence and context on sexual violence and the law in India, *Nivedita Menon* offers an overview of the heterogenous and contentious space of Indian feminism and demonstrates the need to move the feminist political task beyond the state-led transformations.²² In light of the many faults of the law, *Menon* suggests that in sexual harassment cases “the possibility of justice is greater when small work-based communities hammer out acceptable norms of behaviour and punishment that are appropriate to it. More importantly, such a self-constituting community is more likely to be active and to constitute itself anew constantly, thus resulting in suitable amendments in the policy from time to time.”²³ *Victoria Nourse* discusses the history of the US Violence Against Women Act,²⁴ with the aim to “better understand the forces that shaped [] opposition [to the Act], as set of background norms [which *Nourse*] theorize[s] as ‘liberal sexism,’”²⁵ according to which “women’s rights are not worthy in themselves, for women, women of all colours and orientations; they are only a means to an end.”²⁶ To conclude **Part II**, *Ngair Naffine* explores marital rape immunity as the contradiction in criminal law, which has been “obfuscated and deflected by the mainstream scholars.”²⁷

Next, authors in **Part III** explore the interface between feminist legal theory and reproductive rights. From the US perspective, *Lisa C Ikemoto* investigates the relationship between feminist jurisprudence, the law, politics and justice, highlighting issues well beyond abortion. At present, the abortion struggle has been reductive and *Ikemoto* argues that there should be a prioritisation on other issues, such as surrogacy, coerced sterilization, welfare family caps and criminal prosecution of pregnant women.²⁸ More broadly *Ikemoto* argues that a multi-theory approach to issues of reproductive rights and justice is preferable to the use of a single feminist theory.²⁹ Arguing against *Roe*³⁰ exceptionalism, *Noya Rimalt* examines the finer detail of the conceptualization of the right to abortion as a privacy right in the US and concludes, that “women’s best bet for moving forward might well be reconceptualization of abortion as ungendered, unisex right which measures abortion rights against well-established (male) legal protections.”³¹

¹⁸ Rosenbury (n5) 127.

¹⁹ Hunter (n5) 139.

²⁰ Tuerkheimer (n6) 166.

²¹ Tuerkheimer (n6) 167.

²² Menon (n6) 186.

²³ Menon (n6) 212.

²⁴ 1994, Pub L No 102-322, tit IV, 108 Stat 1902 (codified as amended in several sections of 8, 18, 28 and 42 USC).

²⁵ Nourse (n6) 213.

²⁶ Nourse (n6) 229.

²⁷ Naffine (n6) 231.

²⁸ Ikemoto (n7) 249-250.

²⁹ Ikemoto (n7) 251.

³⁰ *Roe v Wade*, 410 US 113 (1973).

³¹ Rimalt (n7) 265.

In **Part IV**, writers explore the relationship among feminist theory, sex discrimination and sexual harassment. Opening this part, *Kimberly A. Yuracko* pictures the evolution of sexual harassment law in the US “in both legal and practical terms,”³² which offers a helpful start to the discussion for a novice reader. *Orit Kamir* points to an academic research gap in that feminists have not engaged sufficiently with the concept of human dignity. In response, *Kamir* offers feminism, which is based both on dignity and respect.³³ Explaining the here proposed concept of ‘dignitarian feminism’ and applying it to the context of Israel’s patriarchal culture, *Kamir* observes that it “includes the dignity-and-respect-based critique of honor patterns.”³⁴ *Katharine K. Baker* addresses the issue of equal education opportunities for women, through the examples of single-sex colleges, single-sex sports and Title IX of the 1972 Civil Rights Act.³⁵

Turning to issues of constitutional law in **Part V**, *Julie A. Nice* explores the convergence of feminist jurisprudence and the US Fourteenth Amendment in their pursuit of equality and liberty. Finding that constitutional law is not the self-sufficient solution, *Nice* observes that “feminists have always understood constitutional law as a language and the courts as a forum for the dialogue necessary to end the subordination of women.”³⁶ *Mary Anne Franks* continues the discussion on the relationship between feminist theory and constitutional law by exploring the First Amendment. She tackles the interesting, if thorny issue of whether revenge porn is free speech, protected under the Constitution. Through the history and evolution of this area, *Franks* concludes that “[f]reedom of speech for women is an unfinished project, not a completed fact, and achieving free speech will require a corrective, not merely protective, approach.” Relying on Kimberlé Crenshaw’s theory, *Franks* posits “[w]hen women have free speech, we all have free speech.”³⁷

On a topic, which is not often seen as an obvious area for feminist scholars (at least to lay persons), because of its apparently “gender-neutral” position, **Part VI** focuses on the intersection between feminist theory and private law. This is one of the sections of the book that every lawyer, student or academic will be familiar with – at least from the law perspective. *Martha Chamallas* engages with the long line of feminist critics of tort law, which posits that tort law fails to provide for adequate compensation for injuries, which disproportionately affect women. Although contemporary tort law is gender-neutral, *Chamallas* offers a clear presentation of the “implicit male bias in tort law” and concludes that “[u]ntil the lack of protection for gender-related torts and the use of gender-biased methods in calculating damages are addressed, women’s lives, activities and potential will continue to be worth less in the eyes of the law, even though formal tort doctrine is gender neutral.”³⁸ Turning to contract law *Hila Keren* highlights the need for engaging with feminist critique of this old discipline, in that “a feminist critique is indispensable for a better future.”³⁹ This need for a feminist insight reaches well beyond merely the obvious choice

³² Yuracko (n8) 285.

³³ Kamir (n8) 304.

³⁴ Kamir (n8) 304.

³⁵ “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational programs or activity receiving federal financial assistance.” 20 USC §1681 (2012).

³⁶ Nice (n9) 365).

³⁷ Franks (n9) 384 (referring to Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* (1989) U Chi Legal F 139, 167).

³⁸ Chamallas (n10) 387.

³⁹ Keren (n10) 407.

of contracts that involve the intimate sphere of contracting parties (surrogacy agreements, cohabitation agreements or divorce settlements). It is imperative that even the “seemingly neutral contractual doctrines”⁴⁰ be discussed, and resultingly the underlying principles and foundations underpinning contract law.

Specifically, on the interface between feminist theory and family law *Susan Frelich Appleton* explores the evolution of US family law through feminist jurisprudence and finds that “feminist interventions have helped to bring about groundbreaking shifts [] while still leaving ample work for feminists to accomplish”⁴¹ in the future. As in the past, family law will continue to attract research attention from feminist scholars. Last to conclude **Part VI**, *Julie C Suk* explores the feminist approach to family leave from the US and the European perspectives. With great disparities between the law and practice still abundant, “gender justice in the workplace will require a gender-equal distribution of parenting duties.”⁴²

Closing the research handbook, **Part VII** briefly explores the interface between feminist legal theory and international law. Whereas a welcome addition here for a more complete array of feminist jurisprudence, readers wishing to focus specifically on international law, may wish to add other titles on their reading list.⁴³ *Adrien K Wing* criticizes the US narrow respect for and understanding of international law and sees that spilling over to the feminist considerations of international law. *Wing* therefore calls for “[i]n the future, it would be significant if US feminists extended their coverage or at least cited more fully to the robust international literature.”⁴⁴ Although trends like TWAIL⁴⁵ and CRF⁴⁶ have advanced the complexities of the understanding of international law, much work is to be done still.⁴⁷ In a joint contribution, *Irem Çağlar* and *Berna Akçali Gür* highlight developments in international human rights law, which in their view would not have been possible, had it not been for “feminist theory and global feminist activism.”⁴⁸ They explore the state’s due diligence obligation, through the lens of *Opuz v Turkey*,⁴⁹ in which the European Court of Human Rights for the first time found that “a state’s failure to address domestic violence was held to constitute a form of gender-based discrimination.”⁵⁰

Overall, this is a highly recommended research handbook of interest to both experts and researchers new to feminist jurisprudence. Although the contributions are mostly presenting the law and perspectives from the United States, the overview of feminist engagement with different areas of the law is impressive, and importantly demonstrates that even areas of law, which are written as “gender-neutral” norms (private law), can benefit substantially from a feminist approach.

⁴⁰ Keren (n10) 408.

⁴¹ Frelich Appleton (n10) 426-427.

⁴² Suk (n10) 466.

⁴³ A recent title on this: Susan Harris Rimmer and Kate Ogg (eds), *Research handbook on Feminist Engagement with International Law* (Edward Elgar Publishing, 2019). The book is reviewed in the same issue of *Wolverhampton Law Journal*, as the present research handbook. Also, Gina Heathcote, *Feminist Dialogues on International Law* (Oxford University Press, 2019).

⁴⁴ Wing (n11) 468.

⁴⁵ Third World Approaches to International Law.

⁴⁶ Critical race feminism.

⁴⁷ Wing (n11) 484.

⁴⁸ Çağlar and Gür (n11) 502.

⁴⁹ *Opuz v Turkey*, 2009-III Eur Ct HR 107.

⁵⁰ Çağlar and Gür (n11) 485.